IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 109 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

YOGESHBHAI LAKHABHAI YADAV& ORS.

Appearance:

MR BY MANKAD APP for Petitioner

MR SUNIL C PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 21/11/2000

ORAL JUDGEMENT

The State Government of Gujarat has, by filing this Criminal Revision Application under Sec. 397 of the Criminal Procedure Code, 1973 (for short "the Cr.P.C.), challenged correctness, legality and propriety of order dt. 10/11/1993 passed by the learned Additional Sessions

Judge, Valsad at Navsar below application Ex.1 submitted by accused of Sessions Case No.45 of 1991. By that order, the learned Additional Sessions Judge, Valsad passed an order of discharge under Sec.227 of Cr.P.C.

2. The facts leading to this present Criminal Revision Application in a nut shell are as follows:-

2.1 As revealed from the memo of this Criminal Revision Application, one F.I.R. was registered against the accused who are revision opponents on 24th October, 1990 in Valsad Railway Police Station for an offence punishable under Secs.306 and 114 of Indian Penal Code. Before that, one accidental death was registered under Sec.174 of Cr.P.C. in the same Police Station on 14th October, 1990. In that case, death of one Bharatkumar Mansukbhai Vaghela was reported and his dead body was found on the Railway Track, and train passed over the body of deceased. Due to this incident, that Bharatkumar died on 14th October, 1990. Before the death of deceased, accused no.1 Yogesh Lakhabhai -revision opponent no.1 had gone to the deceased at about 8-00 p.m. on 7th October, 1990, and demanded Rs.50/- from the deceased. The deceased told the accused no.1 that he had no money to pay to him (accused no.1). On hearing this, accused no.1 lost his temper and deceased was beaten by blows of fists and kicks. Subsequently, accused no.1 called deceased in the factory of diamond cutting and there also, he inflicted belt blows to deceased. At that time, accused no.2 Himatlal Harjibhai (revision opponent no.2) stated to the deceased that if he (deceased) had no money, then he should go and drown. For accused no.3, it is alleged that Chimanlal Harjibhai was the landlord and for recovery of rent from the deceased, he asked accused no.1 to recover the same from the deceased. All three accused have taken part for recovering the amount and for that, the deceased was severely beaten before the incident. As per the case of the prosecution, due to that cruelty on the part of the accused, the deceased was constrained to commit suicide. The deceased ultimately felt that accused persons were harassing so much and they have created such a situation that he should cut his life, and therefore, on 14th October, 1990, he placed his body on the Railway Track, while the train was passing through on that track, and he died. Initially, that death was registered as Accidental Death Entry in Valsad Police Station.

2.2 During the inquiry under Sec.174 of Cr.P.C. father of the deceased gave his statement on 24/10/1990 that accused persons were responsible for the wrongful

act and due to their said wrongful act, Bharatkumar has shortened his life and died, and therefore, offence was registered under Secs. 306 and 114 of I.P.C. That case was investigated by the Police, and ultimately, concerned Police Officer chargesheeted the case to the Court of the learned Judicial Magistrate, First Class, Navsari.

2.3 The learned Judicial Magistrate, First Class, Navsari then passed Committal Order under Sec.209 of Cr.P.C. and committed the case to the Sessions Court, Valsad at Navsari. That Sessions Case came to be registered as Sessions Case No.44 of 1991, and it was assigned for trial to the learned Additional Sessions Judge, Valsad at Navsari (who will be referred to as the learned Judge of the trial Court).

2.4 Before the learned Judge of the trial Court could frame the charge against the accused, all the three accused submitted one application Ex.1 to the trial Court with a request to discharge them from the case in exercise of powers conferred on the learned Judge of the trial Court under Sec.227 of Cr.P.C.

2.5 The learned Judge of the trial Court, after hearing the arguments of the learned advocates for both the parties, and on going through the record of the case, came to a conclusion that there was no sufficient ground for proceeding against the accused, and therefore, by passing an order dt. 10/11/1993, the learned Judge of the trial Court allowed the application of the accused and discharged them from the case under Sec.227 of Cr.P.C.

3. Being aggrieved against and dissatisfied with the said order of discharge under Sec.227 of Cr.P.C., the Prosecution i.e.State has preferred this present Criminal Revision Application.

4. Heard Shri B.Y.Mankad, the learned APP for the revision petitioner -State and Shri Sunil C. Patel, the learned advocate for the revision opponents in detail at length.

5. Shri B.Y.Mankad, the learned APP for the State has argued that death of Bharatkumar was not a homicidal deal or accidential death,, but it was a suicidal death. On inquiry being made from Shri Mankad by this Court, he has submitted that except one Chit which was found from the diary recovered from the dead body of the deceased, there is no other evidence to show that deceased committed suicide and he died of suicidal death. The

entire case rests on this Chit found from the diary which was found from the dead body. Shri B.Y.Mankad has read that Chit before this Court. From this Chit, it appears that to connect the accused no.1 with suicidal death of the deceased, accused had a quarrel with deceased in the matter regarding demand of Rs.50/-, and in that incident, as alleged by the prosecution, accused no.1 had written that Chit to the deceased.

6. On reading that Chit, it also reveals that the deceased was not in a position to pay the amount of rent due from him to Chimanlal Harjivanbhai Patel for which, as alleged by the prosecution, accused no.1 was asked by the accused no.3 to recover the amount of rent from the deceased. It also reveals from this Chit that one person had met the deceased and that person had a talk with the deceased for alleged theft of some diamonds from the factory for which the deceased was responsible for that theft. As per case of the prosecution, first incident with regard to quarrel for demand of Rs.50/- with deceased, took place on 7th October, 1990. From that Chit, it appears that on the same day in the evening, the deceased had taken a drink with one Marathi Rameshbhai, and thereafter the deceased had gone to Bambay and there he had stayed for two to three days at Bombay. Thereafter, he returned and on 14th October, 1990, he committed suicide and died.

6.1 Shri B.Y.Mankad has strenuously argued that because of mental and physical torture given by the accused no.1 to the deceased, the deceased had no other option except to commit suicide and that is why he committed suicide. He has further argued that all the accused brought heavy psychological pressure on the mind of the deceased, as a result of which the deceased committed suicide and died because of suicidal death.

7. Shri Sunil C. Patel, the learned advocate for the revision opponent nos. 1 to 3 has argued that there is no nexus in between what had happened in past with the deceased and action of decision taken for suicidal death. During the period of seven days in between first incident of demand of Rs.50/- which took place on 7th October, 1990 and the date of death of deceased i.e. 14th October, 1990, the deceased had sufficient time to cool down from the situation from which he passed through and he had also ample time to come out from that situation, and therefore, from admitted facts narrated in the Chit, it cannot be said that accused abetted the deceased in committing the suicidal death. Shri Patel has cited two authorities in support of his arguments. One is SWAMY

PRAHALADDAS Vs. STATE OF M.P. & ANR, reported in 1999 Cr.L.R. [SC] 141. In that case, the accused i.e. appellant had asked the deceased 'to go and die', and thereafter, the deceased had gone to his residence and committed suicide. Hon'ble Supreme Court held that "words used by the appellant were casual in nature which are often employed in the heat of the moment". Important aspect was considered by the Hon'ble Supreme Court that to accept the case with suicide was a direct result of the words utterred and further that there was no mens ria reflected from the act of occurring the words, and therefore, ultimately, it was held that the trial Court had committed error in summoning the appellant to face the charge, meaning thereby, the offence was such that it cannot be said that accused committed an offence punishable under Sec. 306 of I.P.C.

7.1 Another authority cited by Shri Patel is of STATE OF MADHYA PRADESH vs. RUPSING AND OTHERS, reported in XII 1991(3) CRIMES 761. The facts of that cited case are practically similar to that of this present case. In that case, deceased was an old man of 65 years of age and killed himself under a running train leaving a suicidal note that accused of that case had insulted him and were threatening him to enter into his house and kill him. The incident of suicide took place after about 15 days after alleged insult and threats having been given to the deceased. The Madhya Pradesh High Court considered Sec.306 of I.P.C. read with Sec.107 of I.P.C. Accused stood trial for an offence punishable under sec.306 read with Sec.114 of I.P.C. Sec.306 of I.P.Code reads as under:-

Abetment of suicide.-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Looking to the ingredients of Sec.306 of I.P.C. to prove an offence under Sec.306 of I.P.C., the prosecution is required to prove the fact that accused abetted in commission of suicide committed by deceased. In view of this, Sec.107 of I.P.C. is required to be referred to.

Sec.107 of I.P.Code defines abetment of thing. It reads as follows:-

" Abetment of a thing.- A person abets the doing of a thing, who-

First- Instigates any person to do that thing;
or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or llegal omission the doing of that thing.

The above definition of abetment of thing done in Sec.107 of I.P.C. will show that the accused person abets committing of thing,

If he-

(i) instigates
(ii) conspires
(iii) aids committing of that thing.

Here in this present case, at the place where deceased committed suicide, none of the accused were present. It is not necessary that presence of accused is necessary, because abetment can be made by remaining absent also for which Sec.114 of I.P.C. will be applicable. Sec.114 speaks that whenever any person, who if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in conscequence of the abetment is committed, he shall be deemed to have committed such act or offence, and therefore, merely because none of the accused was present, when deceased committed suicide, it cannot be said that they have not abetted in commission of offence. So ingredient of "presence" is not necessary for abetment but at the same time, looking to first part of Sec.107 of I.P.C. abettor is required to instigate any person to do that thing i.e. here in this case " to commit suicide" on the basis of chit which has been read over by Shri Mankad, nowhere it is stated in Chit that any of the accused instigated the deceased to commit suicide. As per second part, accused must have been shown to have engaged himself in conspiracy for an act which is alleged to have been abetted by him. From chit, it also appears that there is no conspiracy between accused so that

deceased might be forced to commit suicide. Thus, whole case rests on chit alleged to have been written by deceased and which was found from the diary on the dead body of the deceased. On reading that Chit, it can be said that there is nothing otherwise to connect the accused prima face with the offence punishable under Sec.306 of I.P.Code. To come to this conclusion, this Court has placed reliance on following two important facts:

(i) Incident with regard to demand of Rs.50/- took place on 7th October, 1990; and

(i) Deceased went to Bombay and stayed for three days and thereafter, while returning to his native place, he committed suicide after about seven days.

8. So there is no nexus between the act of committing suicide and acts done by accused in past and in view of this, the learned Judge of the trial Court has rightly come to a conclusion that there is no sufficient ground for proceeding further against the accused, and therefore, this Court finds that there is no incorrectness, illegality or impropriety in passing the order. The learned Judge of the trial Court had jurisdiction to pass an order under Sec.227 of Cr.P.C. As per Sec.227 of Cr.P.C. he was required to consider the records of the case and the documents submitted therewith before passing an order under Sec.227 of Cr.P.C. In this case, he has considered all relevant records of the case along with the chit alleged to have been written by the deceased, and after hearing the learned advocates for both the parties, he has come to a conclusion that there is no sufficient ground for proceeding further against the accused, and therefore, he has passed an order within the frame work of Sec.227 of Cr.P.C. In no case, it can said that order is illegal, incorrect or improper.

9. In view of what is stated hereinabove, this Criminal Revision Application is devoid of merits and the same is required to be rejected, and accordingly this Criminal Revision Application is rejected. Rule is discharged.

Date: 21/11/2000. (H.H.MEHTA,J.)
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